BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.	R.12-12-011 (Filed December 20, 2012)

RESPONSE OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO INTERNATIONAL AIRPORT ON LYFT'S APPLICATION FOR REHEARING OF THE DECISION DENYING LYFT'S APPEAL OF THE RULING ON CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION IN LYFT AND UBER'S 2020 ANNUAL REPORTS

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Dated: May 23, 2022

INTRODUCTION

Pursuant to California Public Utilities Commission's (the "Commission" or "CPUC") Rules of Practice and Procedure 16.1(d) and 1.15, the San Francisco Municipal Transportation Agency and the San Francisco International Airport, (collectively "the City"), and the San Francisco County Transportation Authority (together, the "City and County") submit these joint comments opposing Lyft, Inc.'s ("Lyft") Application for Rehearing of the Decision Denying Lyft's Appeal of the Ruling for Confidential Treatment of Certain Information in Lyft and Uber's 2020 Annual Reports (the "Application for Rehearing") filed on May 6, 2022.

DISCUSSION

In Decision ("D.") 20-03-014, the Commission removed the presumption of confidentiality which obscured Transportation Network Company's ("TNC's") annual reports from the public, establishing the annual reports as public records subject to disclosure under the California Public Records Act ("CPRA").[1] D.20-03-014 also provided a clear process for TNCs to request confidential treatment of information submitted to the Commission.[2] In June 2020, Lyft submitted a motion seeking confidential treatment of a litany of data points required to be submitted in their 2020 Annual Report.[3] In December 2020, the Administrative Law Judge ("ALJ") issued a ruling denying Lyft's motion, in part, as to the balance of geolocation and trip data for which Lyft sought confidential treatment (collectively "Trip Data").[4] The 2020 Confidentiality Ruling found that Lyft did not satisfy their burden of demonstrating that a trade secret or privacy exemption applies to shield the balance of Trip Data from public disclosure.[5] Lyft has since engaged in a tireless quest to overturn the 2020 Confidentially Ruling as it pertains to the Trip Data at issue and to subvert D.20-03-014, clogging this

[1] D.20-03-014 at 11 ("Since records received by a state regulatory agency from regulated entities relate to the agency's conduct of the people's regulatory business, the CPRA definition of public records includes records received by, as well as generated by, the agency.")

[2] D.20-03-014 at 28-29.

[3] Motion of Lyft, Inc. for Confidential Treatment of Certain Information in its 2020 Annual Report, filed on June 22, 2020.

[4] Assigned ALJ's Ruling on Uber Technologies, Inc.'s and Lyft's Motions for Confidential Treatment of Certain Information in Their 2020 Annual Reports, issued on December 21, 2020 (the "2020 Confidentiality Ruling").

[5] 2020 Confidentiality Ruling, at 5, 17.

proceeding and absorbing Commission and party resources on arguments which have been given fair and complete consideration.

Rule 16.1(c) of the Commission's Rules of Practice and Procedure requires that any application for rehearing state the grounds on which the applicant considers a decision to be unlawful or erroneous. The application must include specific references to the record or law. The purpose of an application for rehearing "is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[6] While Lyft frames their Application for Rehearing as alerting the Commission to legal errors in the Decision denying their appeal, the assertions in the Application for Rehearing are at their core and on their face reassertions of the same arguments that have already been considered and rejected in this proceeding.[7] As the Commission has previously explained, "Rehearing applications are not a proper vehicle to merely reargue positions taken during a Commission proceeding."[8] Moreover, the Commission has cautioned in similar contexts that using Commission procedures to take the "proverbial 'second bite at the apple'" is a sufficient basis to deny a party's request.[9] This is at least Lyft's third bite at the apple – there will soon be no apple left.[10]

[6] Rule 16.1(c) of the Commission's Rules of Practice and Procedure.

[7] The arguments in Lyft's Application for Rehearing mirror those already made by Lyft in this proceeding. *See, e.g.*, Motion of Lyft, Inc. for Confidential Treatment of Certain Information in its 2020 Annual Report, filed on June 22, 2020; Reply of Lyft, Inc. Regarding Motion for Confidential Treatment of Certain Information in its 2020 Annual Report, filed July 17, 2020; Appeal of Lyft, Inc. Re: Ruling: Denying, in Part, Motions by Uber Technologies, Inc. and Lyft Inc. for Confidential Treatment of Certain Information in their 2020 Annual Reports, filed May 28, 2021; Comments of Lyft, Inc. on Proposed Decision Denying Appeal of Lyft, Inc. Re: Ruling Denying, in part, Motions By Uber Technologies, Inc. and Lyft, Inc. for Confidential Treatment of Certain Information in their 2020 Annual Reports, filed April 21, 2021; Reply Comments of Lyft, Inc. on Proposed Decision Denying Appeal of Lyft, Inc. Re: Ruling Denying, in part, Motions By Uber Technologies, Inc. and Lyft, Inc. for Confidential Treatment of Certain Information in their 2020 Annual Reports, filed April 26, 2021; *see also* Motion of Lyft, Inc. for Confidential Treatment of Certain Data in its 2021 Annual Report, filed June 21, 2021.

[8] Application of S. California Edison Co. (U 338-e) for Approval of the Results of Its 2013 Loc. Capacity Requirements Request for Offers for the W. Los Angeles Basin., (May 26, 2016) 2016 WL 3167376, at *8.

[9] In Re Order Instituting Rulemaking to Implement California Renewables Portfolio Standard Program (Jan. 23, 2006) 2006 WL 192533, at *1 (denying a motion for reconsideration and commenting that "AReM [the movant] here merely seeks the proverbial 'second bite at the apple,' which is sufficient basis to deny the Reconsideration Motion.")

[10] *Supra*, note 7.

The City and County's responses to Lyft's confidentiality and trade secret arguments are well-documented in this proceeding and apply with full force to Lyft's Application for Rehearing. Lyft has taken up nearly two years of the Commission's time pressing nearly identical confidentiality arguments that have been exhaustively considered and repeatedly denied.[11] Lyft's actions are a prime example of the behavior the Commission cautioned it would view with suspicion when it issued D.20-03-014.[12] In D.20-03-014, the Commission quoted *Re Pacific Bell* (1986) 20 CPUC 2d 237, warning:

> We think [an] overall comment about one recurring and nagging procedural point is warranted simply because there seems little likelihood, from what we have observed thus far, that its recurrence will diminish without comment on our part. At many turns, PacBell has raised concerns and objections to parties, including our staff, having access to and fully using data which it alleges is "proprietary."…<u>These issues tend to divert parties' resources and energy from the more pressing goal of our process, which is a full, open, and expeditious airing of facts, unimpeded by procedural roadblocks and obstacles.</u>
>
> We think PacBell would do well to recall the fable of the boy who cried wolf too often and paid a dear price because when it really mattered nobody took him seriously. PacBell, as a franchised monopoly, exists in a world of regulation. Information about its operations must be freely and openly exchanged in rate proceedings if the regulatory process is to have credibility. Its operations, as any utility's, must be on public view, since it serves the public trust.[13]

The Commission continued in *Re Pac Bell* to say: "PacBell must understand that in balancing the public interest of having an open and credible regulatory process against its desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process."[14] The City and County asks the Commission to give more weight to having a fully open rulemaking process and to serving the public's strong and recognized interests in accessing the Trip Data than to Lyft's relentless efforts to obscure that data from disclosure.

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[11] *See* 2020 Confidentiality Ruling; Decision 22-05-003 Denying Appeal of Lyft, Inc. Re: Ruling Denying in Part, Motions by Uber Technologies, Inc. and Lyft Inc. for Confidential Treatment of Certain Information in their 2020 Annual Reports, filed on May 5, 2020; *see also* Ruling on Uber Technologies, Inc.'s, Lyft, Inc's, HopSkipDrive, Inc.'s, and Nomad Transit, LLC's Motions for Confidential Treatment of Certain Information in their 2021 Annual Reports (rejecting the balance of Lyft's claims for confidential treatment because they had "failed to meet their burden of proving that the information [was] protected from disclosure on either trade secret or privacy grounds).

[12] D.20-03-014, at 30.

[13] *Id*., quoting *Re Pac Bell*, 20 CPUC2d, at 252 (emphasis added). D.20-03-014 noted that the "same policy of openness is applicable to this quasi-legislative proceeding."

[14] *Re Pac Bell*, 20 CPUC2d, at 252.

For the reasons set forth above, and in our companion response to Lyft's Motion for Emergency Stay, the City and County urge the Commission to deny Lyft's Application for Rehearing and to make the Trip Data available to the public in accordance with the Decision denying Lyft's Appeal and the 2020 Confidentiality Ruling.

Dated: May 23, 2022

Respectfully submitted,

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On behalf of: THE, SAN FRANCISCO MUNICIPAL TRANSPORTATION AUTHORITY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO INTERNATIONAL AIRPORT